



U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

December 16, 1980

James H. Lesar, Esquire
Suite 203
2101 L Street, N. W.
Washington, D. C. 20037

Dear Mr. Lesar:

This is in further response to the pending administrative appeals of your client, Mr. Harold Weisberg, from the actions of the Federal Bureau of Investigation on his requests for access to records of the Dallas and New Orleans Field Offices which pertain to the assassination of President John F. Kennedy.

As the result of extensive discussions between Bureau personnel and members of my staff, the F.B.I. has agreed to certain modifications of its initial actions on these requests. I have decided to affirm the Bureau's initial actions in part, to affirm the modified actions which will result from the discussions indicated, and to reverse the actions in one significant respect.

There was a relatively small amount of classified material which was actually processed by the F.B.I. pursuant to these two requests. Of the 113 pages and 142 individual paragraphs that were processed, the review on administrative appeal has resulted in the declassification of 29 entire pages and 36 additional paragraphs. As to the remaining classified material, the actions of the F.B.I. are affirmed. 5 U.S.C. 552(b)(1). This material has been referred to the Department Review Committee for consideration whether it warrants continued classification under Executive Order 12065. You will be notified of the results of this review.

Exemption 2 of the Act, 5 U.S.C. 552(b)(2), was used, either alone or in conjunction with 5 U.S.C. 552(b)(7)(D), to withhold source symbol numbers and informant file numbers. Such numbers are purely internal agency matters as to which the general public has no legitimate interest, and the Bureau's use of this exemption for this purpose is affirmed. To the extent that exemption 3 of the Act, 5 U.S.C. 552(b)(3), was used, either alone or in conjunction with 5 U.S.C. 552(b)(7)(C), to withhold "rap sheets" and

the names of personnel of the Central Intelligence Agency, the actions of the F.B.I. are affirmed. 28 U.S.C. 534; 50 U.S.C. 403g. All uses of this exemption in conjunction with § 6103 of the Internal Revenue Code will be reconsidered. There is some question whether claims of exemption 6, 5 U.S.C. 552(b)(6), should not have been based instead upon exemption 7(C), 5 U.S.C. 552(b)(7)(C), given the investigatory nature of the file into which the records in question had been incorporated. On the other hand, the actual records are intrinsically exemption 6 material (medical records, etc.). In any event, the decision of the Bureau to withhold this information on personal privacy grounds is affirmed on the basis of both exemptions.

On a number of occasions, your client has questioned whether exemption 7 of the Act, 5 U.S.C. 552(b)(7), can properly be applied at all to records of the F.B.I. which pertain to the Kennedy assassination. In my judgment, these records of the Bureau do constitute investigatory records compiled for law enforcement purposes within the meaning of the Freedom of Information Act. Irons v. Bell, 596 F.2d 468 (1st. Cir. 1979). See also Weisberg v. Department of Justice, 489 F.2d 1195 (D.C. Cir. 1973), cert. denied, 416 U.S. 993 (1974).

The two exemptions most frequently cited by the Bureau to deny access to material within the scope of your client's requests were 7(C) and 7(D), 5 U.S.C. 552(b)(7)(C) and (7)(D). These exemptions were, however, used to deny access to two very different kinds of material. First, they were used to withhold the names of persons, or purely descriptive information pertaining to them, or minimal information furnished by them, to the limited extent necessary to prevent the disclosure of their identities. All such usages of these exemptions, specifically including the denials of access to the names of F.B.I. Special Agents in the more recent portions of the processed files, are affirmed. Second, these exemptions were used to deny access to significant quantities of substantive information. On the basis of the results of my staff's review, I am not persuaded that all such usages of these exemptions were justified. Accordingly, I am at this time reversing the F.B.I.'s actions as to all such withholdings and remanding them for de novo reconsideration, which will be carried on in close coordination with my staff. Prior to undertaking the actual review of these records, Bureau personnel will familiarize themselves thoroughly with the Report of the Warren Commission, the relevant publications of the House Select Committee on Assassinations, and the various other official, readily-available, authoritative reference sources pertaining to the Kennedy assassination. This kind of substantive information in these files will be released unless the need for continued withholding is clearly established. In

exercising the discretion which is vested in this Department whether or not to release material which is exempt from mandatory disclosure under the Act, I have concluded that the importance to the American public of the Bureau's investigation of the Kennedy assassination is too great for me to apply any less rigorous standard. All denials of access which were effected on the basis of exemption 7(E), 5 U.S.C. 552(b)(7)(E), will also be reprocessed, but the Bureau's reliance on exemption 7(F), 5 U.S.C. 552(b)(7)(F), to withhold the names of agents of the Drug Enforcement Administration was correct and is affirmed.

There are certain other aspects of these appeals as to which it has been agreed that further action by the F.B.I. is appropriate. With respect to the Dallas Field Office, the Bureau will now conduct an all-reference search on the assassination itself, on Lee Harvey and Marina Oswald, on Jack Ruby and on the Warren Commission. All hitherto unprocessed records on these subjects, whether contained in main files or see references, will be carefully screened and those which pertain to the assassination in any way will be processed. In addition, as a matter of agency discretion, the Bureau will conduct all-reference searches on George De Mohrenshildt and former Special Agent James P. Hosty, and will also attempt to determine whether there are any official or unofficial administrative files which pertain to the Kennedy case, with particular emphasis on seeking files on "critics" or "criticism" of the F.B.I.'s assassination investigation. Any records located as the result of these searches will also be carefully screened and, if appropriate, processed for possible release to your client. With respect to the New Orleans Field Office, the Bureau will undertake a further search for a possible main file on David Ferrie, and will forward to Headquarters for screening and possible processing those portions of another file which pertain to Ferrie, Jim Garrison and Jack Ruby. In addition, as a matter of agency discretion, the F.B.I. will conduct a new search in New Orleans for any existing official or unofficial administrative files which pertain to the Kennedy case. The action of the F.B.I. in not conducting a specific search for records pertaining to Gordon Novel is affirmed.

As you know, numerous records in Dallas and New Orleans files were referred to other agencies and components of the Department of Justice for their views, with the request that they be returned to the F.B.I. for action. As the result of efforts by Bureau personnel and members of my staff, virtually all of those records have now been returned with the exception of those

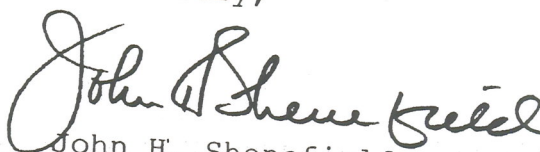
sent to the Central Intelligence Agency. The F.B.I. has agreed with my staff that all of the unclassified referred records should be reprocessed. Although appropriate weight will be given to the views of the other agencies and components, the Bureau, acting in conjunction with my staff, will consider these records for possible release in light of the same standards being applied to all of the other records within the scope of these requests. Particular attention will be given to claims that material is barred from release by § 6103 of the Internal Revenue Code. At this time, I am specifically finding that the denial of access on this basis to the requests for assistance in the Kennedy investigation which were sent from the F.B.I. to the Internal Revenue Service was improper.

Of the more than 100,000 pages of records to which access was in effect denied on a "previously processed" basis, it has been established that some 3,000 pages may not in fact have been processed as part of the Headquarters files. These pages have now been processed. With respect to all other documents in this category, the Bureau will entertain requests for specific items, subject to your client's willingness to pay for them at the rate of ten cents per page. When the substantive text of the second copy of a record is the same as that of a previously released record, it is my conclusion that there is insufficient presumptive benefit to the general public to warrant a fee waiver as to such materials. To the extent your client can show that any of these second copies have independent significance, I will consider granting a fee waiver as to them on a retroactive basis. My decision on this point is without prejudice to Mr. Weisberg's pending appeal from the termination of his general fee waiver for Kennedy records, but it is final as to previously processed documents, regardless of what may be the final decision on that other appeal.

Lastly, there are various films and tapes in these files which were not processed for possible release to Mr. Weisberg. The Bureau will now consult with him regarding these materials and will process any which are of interest to him. Only in the event that he requests additional copies of items which have already been furnished to him will he be charged.

Judicial review of my action on these appeals is available to your client in the United States District Court for the judicial district in which he resides or has his principal place of business, or in the the District of Columbia, or in the Northern District of Texas and the Eastern District of Louisiana, as to records in each of these districts.

Sincerely,

A handwritten signature in cursive script that reads "John H. Shenefield". The signature is written in dark ink and is positioned above the typed name.

John H. Shenefield
Associate Attorney General

cc: Mr. Harold Weisberg